

# **THE NEW RULE**

## **§45.121. Credit Restrictions and Delinquent List for Liquor.**

(a) **Purpose.** This rule implements §§102.32, 11.61(b)(2) and 11.66 of the Texas Alcoholic Beverage Code (Code).

(b) **Definitions.**

(1) Alcoholic beverage—as used in this section includes only liquor, as that term is defined in §1.04 of the Code.

(2) Delinquent payment—A financial transaction or instrument that fails to provide payment in full or is returned to the Seller as unpaid for any reason.

(3) Retailer—A package store permittee, wine only package store permittee, private club permittee, private club exemption certificate permittee, mixed beverage permittee, or other retailer, and their agents, servants and employees.

(4) Seller—A wholesaler, class B wholesaler, winery, wine bottler, or local distributor and their agents, servants and employees.

(c) **Invoices.** A delivery of alcoholic beverages by a Seller, to a Retailer, must be accompanied by an invoice of sale showing the name and permit number of the Seller and the Retailer, a full description of the alcoholic beverages, the price and terms of sale, and the place and date of delivery.

(1) The Seller's copy of the invoice must be signed by the Retailer to verify receipt of alcoholic beverages and accuracy of invoice.

(2) The Seller and Retailer must retain invoices in compliance with the requirements of §206.01 of the Code.

(3) Invoices may be created, signed and retained in an electronic or internet based inventory system, and may be retained on or off the licensed premise.

(d) **Delinquent Payment Violation.** A Retailer who makes a delinquent payment to a Seller for the delivery of alcoholic beverages violates this section unless an exception applies.

(1) A Retailer who violates this section must pay a delinquent amount, and a Seller may accept payment, only in cash or cash equivalent financial transaction or instrument.

(2) A Retailer whose permit or license is cancelled for cause, voluntarily cancelled, expires, suspended or placed in suspension while on the delinquent list may be disqualified from applying for or being issued an original or renewal permit or license. For purposes of this rule,

the Retailer includes all persons who were owners, officers, directors, equity interest holders and shareholders of the Retailer at the time the delinquency occurred.

**(e) Reporting Violation and Payment; Failure to Report.**

(1) A report of a violation or payment must be made by completing all information required on the form provided by the commission for this purpose. Reporting forms may be obtained on the commission's public web site at <http://www.tabc.state.tx.us>.

(2) Sellers are required to report each violation to the commission electronically to [credit.law@tabc.state.tx.us](mailto:credit.law@tabc.state.tx.us), or by submitting the appropriate forms in writing by fax or by mail to the number or address listed on the form.

(3) Sellers are required to report a Notice of Payment when a Retailer makes payment in full for a previously reported violation. The report may be filed electronically to [credit.law@tabc.state.tx.us](mailto:credit.law@tabc.state.tx.us), or by submitting the appropriate forms in writing or by fax or mail to the number or address listed on the form.

(4) All reports of violations or payment under this subsection must be made to the commission within two business days from the date the violation is discovered by the Seller.

(5) A Seller who fails to report a violation or a payment as required by this subsection is in violation of this section.

**(f) Prohibited Sales and Delivery.**

(1) Sellers are prohibited from selling or delivering alcoholic beverages to any licensed location of a Retailer who appears on the commission's Delinquent List from the date the violation appears on the Delinquency List until the Release Date on Delinquent List, or the Retailer no longer appears on the Delinquent List.

(2) A sale or delivery of alcoholic beverages prohibited by this section is a violation of this section.

**(g) Prohibited Purchase or Acceptance.**

(1) A Retailer who appears on the commission's Delinquency List is prohibited from purchasing or accepting delivery of alcoholic beverages from any source to any of Retailer's licensed locations from the date the violation appears on the Delinquency List until the Release Date on the Delinquent List or until the Retailer no longer appears on the Delinquent List.

(2) A prohibited purchase or acceptance of a delivery of alcoholic beverages is a violation of this section.

**(h) Exception.** A Retailer who wishes to dispute a violation of this section or inclusion on the commission's Delinquent List, based on a good faith dispute between the Retailer and the Seller may file a detailed written statement with the commission and the Seller explaining the

basis of the dispute. The Retailer must immediately notify the commission of the resolution of a dispute under this subsection.

**(i) Penalty for Violation.** An action to cancel or suspend a permit or license may be initiated under §11.61(b) (2) of the Code for repeat violations of this section.

**(j) Delinquent List.**

(1) The Delinquent List is published bi-monthly on the commission's public web site at <http://www.tabc.state.tx.us>. An interested person may receive the Delinquent List by electronic mail each date the Delinquent List is published by registering for this service online.

(2) The Delinquent list will be published the 5<sup>th</sup> day of each month for purchases made from the 1<sup>st</sup> to the 15<sup>th</sup> day of the preceding month, for which payment was not made on or before the 25<sup>th</sup> day of that month. The Delinquent list will be published the 20<sup>th</sup> day of the month for purchases made between the 16<sup>th</sup> and the last day of the preceding month for which payment was not made on or before the 10<sup>th</sup> day of the month.

(3) The Delinquent List is effective at 12:01 A.M. on the date of publication.

(4) The Delinquent List is updated continuously to reflect Notice of Payments received, each day the commission is open during normal business hours. The Release Date is the date the commission enters the Notice of Payment onto the Delinquent List.

**(k) Calculation of Time.** A due date under this section or §102.32(c) of the Code that would otherwise fall on a Saturday, Sunday or a state or federal holiday, will be the next regular business day. A payment sent by U.S. postal service or other mail delivery service is deemed made on the date postmarked or proof of date delivered to the mail delivery service. A payment hand delivered to an individual authorized to accept payment on behalf of the Seller is deemed made when the authorized individual takes possession of the payment.